

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

|                           |   |                              |
|---------------------------|---|------------------------------|
| DAVID E. FEATHERS,        | ) | CASE NO. 1:07 CV 227         |
|                           | ) |                              |
| Plaintiff,                | ) | JUDGE CHRISTOPHER A. BOYKO   |
|                           | ) |                              |
| v.                        | ) | <u>MEMORANDUM OF OPINION</u> |
|                           | ) | <u>AND ORDER</u>             |
| GERALD T. MCFAUL, et al., | ) |                              |
|                           | ) |                              |
| Defendants.               | ) |                              |

On January 26, 2007, plaintiff pro se David E. Feathers, an inmate at the Lake Erie Correctional Institution ("Lake Erie"), filed this action under 42 U.S.C. § 1983 and the Americans with Disabilities Act against the following defendants: Gerald T. McFaul, John and Jane Does, Mr. Doviak, Mr. Davidson, Mrs. Minink, Nurse Tear, Dr. Doe, Nurse Roe, Dr. Tran, Inspector Fisher, Deputy Warden Compton, Warden Ganshiemer, M.T.C., and the Ohio Department of Rehabilitation and Corrections. Plaintiff requests that he be permitted to proceed in forma pauperis. For the reasons stated below, this action is dismissed without prejudice.

The complaint alleges that plaintiff was assaulted and severely injured by another inmate when both were housed at the Cuyahoga County Jail. It is further alleged that, upon his transfer to Lake Erie, officials have been deliberately indifferent to plaintiff's medical needs by forcing him to attend GED classes

and by not assigning him to a lower bunk. It is further alleged that plaintiff has been subjected to retaliatory disciplinary actions because of his complaints concerning the alleged failure to accommodate his medical needs.

Title 28 U.S.C. § 1915(g) prevents a prisoner from bringing a civil action or appealing a judgment in a civil action in forma pauperis if, on three or more prior occasions, the prisoner brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted.

Feathers has on at least three occasions filed a civil action failing to state a claim in this court. See, Feathers v. Gansheimer, Case No. 1:06 CV 487; Feathers v. Portage County, 5:05 CV 681; Feathers v. Wilson, 4:01 CV 1708; Feathers v. Brown, 5:00 CV 2430. Thus, as the complaint in the instant action does not contain allegations reasonably suggesting he is in imminent danger of serious physical injury, he may not proceed in forma pauperis.

Accordingly, this action is dismissed without prejudice. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

s/Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

Date: February 8, 2007